

## **SUSANNE MEYER BROWN, City Attorney**

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## ATTORNEYS FOR DEFENDANTS

**CITY OF CONCORD, GUY SWANGER,**

TAMRA ROBERTS, CODY HARRIS

and RENELLE-REY VALEROS

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE,

Case No. 20-cv-02432-JD

Plaintiff,

vs.

CITY OF CONCORD; CITY OF COTATI;  
COUNTY OF CONTRA COSTA; COUNTY OF  
SONOMA; GUY SWANGER; TAMRA  
ROBERTS; CODY HARRISON; RENELLE-  
REY VALEROS; DIANA BECTON;  
CHRISTOPHER WALPOLE; COLLEEN  
GLEASON; JILL RAVITCH; ANNE  
MASTERSON; LAURA PASSAGLIA;  
BENNET KNIGHT; BAUDELIA GALLO; and  
DOES 1-10, inclusive.

### Defendants.

**DEFENDANTS CITY OF CONCORD, GUY SWANGER, TAMRA ROBERTS, CODY HARRISON, AND RENELLE-REY VALEROS' REPLY TO OPPOSITION TO MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

[FRCP 12(b)(6)]

**Date:** October 14, 2021

**Time:** 10:00 AM

**Dept.: Courtroom 11, 19th Floor**

**Judge:** District Judge James Donato

1 Defendants CITY OF CONCORD, GUY SWANGER, TAMRA ROBERTS, CODY  
2 HARRISON, and RENELLE-REY VALEROS (collectively the Concord Defendants) submit this  
3 Reply to Plaintiff JANE DOE's opposition to their Motion to Dismiss the Second Amended Complaint  
4 ("SAC"). Neither plaintiff's SAC nor her opposition to defendants' motions to dismiss the SAC  
5 adequately address that she has failed to allege that (1) defendants "acted with an intent or purpose to  
6 discriminate against plaintiff based upon her membership in a protected class", or (2) defendants'  
7 treatment of her was "irrational and wholly arbitrary." Dkt. 45, pp. 2-3.

8 **I. Plaintiff Has Not Adequately Alleged an Equal Protection Violation**

9 The Concord Defendants join in and incorporate by reference the argument in the Contra Costa  
10 Defendants' reply to Plaintiff's opposition to motion to dismiss. Dkt. 57, 1:19-5:15.

11 Plaintiff's SAC does not plead "enough facts to state a claim for relief that is plausible upon its  
12 face." *Bell. Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff's equal protection allegations  
13 against the Concord Defendants must fail because those defendants investigated Plaintiff's rape  
14 allegations and sent the case to the Contra Costa County District Attorney's Office for review for the  
15 filing of possible criminal charges. SAC, ¶ 98. There are no allegations to plausibly suggest that the  
16 Concord Defendants treated her case any differently because she was an alleged victim of a sexual  
17 assault. In fact, there are no allegations regarding any other investigations of the Concord Police  
18 Department, nor are there any allegations that any officer harbored any personal animus towards her.  
19 That Plaintiff disagrees with how the officers conducted their investigation is insufficient to show that  
20 the Concord Defendants violated her equal protection rights.

21 **II. The Monell Claims Are Not Adequately Pled**

22 The Concord Defendants join in and incorporate by reference the argument in the Contra Costa  
23 Defendants' reply to plaintiff's opposition to motion to dismiss. Dkt. 57, 7:6-8:15.

24 Regarding plaintiff's allegations against the Concord Defendants, the SAC does not adequately  
25 allege or identify a specific policy or custom of the City of Concord, any specific regulations, or any  
26 officially adopted or promulgated decisions, the execution of which allegedly led to the infliction of  
27 the alleged injuries.

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1       **III. The SAC Fails to Allege Facts to State a Claim for Civil Conspiracy**

2              The Concord Defendants join in and incorporate by reference the argument in the Contra Costa  
3 Defendants' reply to Plaintiff's opposition to motion to dismiss. Dkt. 57, 8:16-26.

4       **IV. Plaintiff's Remaining Claims Fail as a Matter of Law or Are Not Adequately Alleged**

5              The Concord Defendants join in and incorporate by reference the argument in the Contra Costa  
6 Defendants' reply to Plaintiff's opposition to motion to dismiss. Dkt. 57, 9:1-10:20.

7       **V. Concord Defendants Are Immune from Liability for Plaintiff's State Law Causes of  
8 Action**

9              Plaintiff's opposition fails to address the Concord Defendants' argument that they are immune  
10 from liability for Plaintiff's California state law causes of action pursuant to Government Code Sections  
11 821.6 and 815.2. Plaintiff has conceded that the Concord Defendants are immune, and her state law  
12 causes of action should be dismissed without leave to amend accordingly. *See, e.g., Castillo v. City of*  
13 *Watsonville*, 2020 WL 5798237, \*6 (N.D. Cal. September 29, 2020) (stating the general rule that “[i]n  
14 instances where a plaintiff simply fails to address a particular claim in its opposition to a motion to  
15 dismiss that claim, courts generally dismiss it with prejudice.”)

16       **VI. Plaintiff Cannot State a Claim Based on a Right to an Investigation**

17              Plaintiff's opposition fails to address the Concord Defendants' argument that Plaintiff cannot  
18 state a claim based on a right to an investigation. Plaintiff has conceded this argument, and her SAC  
19 should be dismissed to the extent it is based on a failure to investigate. *See, e.g., Castillo*, 2020 WL  
20 5798237 at \*6.

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## VII. Conclusion

For the reasons set forth above, defendants CITY OF CONCORD, GUY SWANGER, TAMRA ROBERTS, CODY HARRISON, and RENELLE-REY VALEROS respectfully submit that their motion to dismiss should be granted.

SUSANNE MEYER BROWN, City Attorney

Date: September 16, 2021

By:

/S/

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Joshua K. Clendenin, Senior Assistant City Attorney  
Attorneys for Defendants CITY OF CONCORD,  
GUY SWANGER, TAMRA ROBERTS, CODY  
HARRISON, and RENELLE-REY VALEROS